

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 TRANSAMERICA LIFE
12 INSURANCE COMPANY,

13 Plaintiff,

14 v.

15 ANGELINA D. SLEE, et al.,

16 Defendant.

17 CASE NO. 2:19-CV-1536-JLR-DWC

18 ORDER DENYING MOTION TO
19 DISMISS AS MOOT

20 The District Court has referred this action to United States Magistrate Judge David W.
21 Christel. Presently before the Court is Defendants' Motion to Dismiss. Dkt. 13.

22 Defendants Angelina Slee, Thomas Slee, and Anthony Slee, as power of attorney for
23 Angleina Slee, filed the pending Motion to Dismiss on November 7, 2019. *See* Dkt. 13. After the
24 Motion to Dismiss was filed, Plaintiff filed the Amended Complaint as a matter of course. *See*
25 Dkt. 18; Fed. R. Civ. P. 15(a)(1)(B) (the Amended Complaint was filed within 21 days of the
26 Motion to Dismiss).

27 An amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*, 963 F.2d
28 1258, 1262 (9th Cir. 1992). The original complaint is "treated thereafter as non-existent." *Loux v.*

1 *Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) overruled on other grounds by *Lacey v. Maricopa County*,
2 693 F.3d 896 (9th Cir. 2012). The Motion to Dismiss attacks the original Complaint, which is
3 now “non-existent.” Therefore, the Motion to Dismiss became moot with the filing of the
4 Amended Complaint.

5 Accordingly, the Motion to Dismiss (Dkt. 13) is denied without prejudice as moot.
6 Defendants have the right to file a motion to dismiss as to the Amended Complaint. *See*
7 *Bromfield v. McBurney*, 2008 WL 623322, *2 (W.D. Wash. March 3, 2008) (recommending the
8 defendants' motion to dismiss be denied as moot because an amended complaint was filed,
9 which operated as a complete substitute for the original complaint); *see also Bacon v. Reyes*,
10 2013 WL 3893254 (D. Nev. July 26, 2013) (denying motion for summary judgment as moot
11 based on the filing of an amended complaint); *Farkas v. Gedney*, 2014 WL 5782788, *3 (D.
12 Nev. Nov. 6, 2014) (“[B]ecause granting [plaintiff’s] motion for leave to amend will alter the
13 scope of defendants’ now-filed motion for summary judgment, defendants’ motion for summary
14 judgment is denied without prejudice, subject to re-filing based on the scope of the soon-to-be
15 amended complaint.”).

16 Dated this 12th day of December, 2019.


David W. Christel
United States Magistrate Judge